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09/735,498	12/14/2000	Vic De Zen	DSJ-10670US	5768

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 04/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/735,498

Applicant(s)
VIC DE ZEN

Examiner
YVONNE M. HORTON

Art Unit
3635



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 14, 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-8, 10, and 13-16 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 9, 11, and 12 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claims 11 and 15 are objected to because of the following informalities: In claim 11, line 3, --the-- should be inserted after "when". In claim 15, lines 4 and 7, --the-- should be inserted after "when". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 15 recites the limitation "said retaining channel" in line 9. There is insufficient

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antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2,5,7,8,10,13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,442,880 to GIPSON. GIPSON discloses the use of a first (10) and second (18) one piece integrally molded circumscribing frame members which fit against one another to form an article retaining recess (12,14,16). Regarding claims 2,5,10 and 14, the frame members (10,18) are injection molded plastic, column 3, lines 55-57, and at least one of the frame members (10) includes an integral laterally projecting peripheral lip (101-104) to define a retaining channel, column 5, lines 30-31 and lines 57-66; wherein the frame members (10,18) interengage by tab (20) of frame (18) being received in slot (22) of frame (10). In reference to claims 7 and 8, the recesses (12,14,16) retain glazing units (72,74) and the sides (105,106) of the frame (10) support a sliding window (24). Regarding claim 13, the retaining recesses, in the form of rabbets, column 5, lines 30-31 and 57-66, locate the glazing units (72,74) wherein the glazing units (72,74) are secured thereto by means (76,77,80,81).

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,442,880 to GIPSON. As detailed in paragraph #7 above, GIPSON discloses the basic claimed frame except for the members being compression molded plastic members. The applicant is reminded that the methods of forming a device is not germane to the issue of patentability of the device itself. Although GIPSON does disclose the method of compression molding, it would have been obvious to one having ordinary skill in the art that the frame of GIPSON could have been compression molded since compression and injection molding are art recognized equivalent methods of forming frame members.

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Allowable Subject Matter

11. Claims 3,4,9,11 and 12 are objected to as depending upon a rejected base claim and would be allowed if rewritten in independent form to include all of the limitations of the base claim.
12. Claims 15 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
13. The following is a statement for the reasons for allowance: Regarding claims 3,4,11,15 and 16, the prior art of record fails to teach the use of a one piece integral frame including first and second peripheral frame members both including a laterally projecting lip which fit together to form a space therebetween for receiving an article therein.

In reference to claims 9 and 12, the prior art further fails to teach the use of a third circumscribing frame member that fits against the first and second integral circumscribing frame members. US Patents #4,575,966; #5,996,285; and #6,216,392 all disclose a third frame member. However, the frames of '392 and '966 are both formed by using miter cut four frame members assembled to form a frame. '285 only disclose the use of only one rectangular frame member that fits up against the cab of a truck.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

Yvonne M. Horton
Patent Examiner
Art Unit 3635
April 8, 2002

